

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,
PATTAMBI

Present:- Smt. Neema Noor Mohamed, Judicial Magistrate of First Class.

Tuesday, this the 28th day of April, 2026/ 8th day of Vaisakha, 1948 S.E.

Calendar Case No. 318/2016.

State represented by the Sub Inspector of Police, Pattambi Police Station in crime No. 776/2015. (By Smt. Resmi.V.S. Grade II A.P.P)		Complainant
Abbas, aged 37/15 years, S/o. Muhammed, Panakkadan House, Jallippara P.O, Ommala, Agali. (By Adv. Sri. V.M. Sabeer)		Respondent
	Punishable under sections 406 and 420 IPC.	
Plea	Not guilty	
Finding	Not guilty	
Sentence or order	The accused is found not guilty for the offences punishable under sections 406 and 420 IPC and is acquitted of these offence under sections 248(1) Cr.P.C. The bail bond executed by these accused stand cancelled and he is set at liberty forthwith.	

DATE OF

Offence	Complaint	Apprehension	Release on Bail	Commencement of Trial	Close of Trial	Order	Explanation for
01/01/12 to 18/07/15	18/07/15	01/12/16	01/12/16	14/06/24	23/04/26	28/04/26	No delay

DESCRIPTION OF ACCUSED

Name	Father's Name	Age	Residence
Abbas	Muhammed	37/15	Ommala, Agali

J U D G M E N T

This is a case instituted upon the final report submitted by the Sub Inspector of Police, Pattambi Police Station in crime No. 776/2015 against the accused alleging the commission of offence punishable under sections 406 and 420 of the Indian Penal Code.

2. The summary of the prosecution case is as follows: CW1 and the accused were business partners. During the subsistence of the partnership, in the year 2012, a JCB bearing registration No. KL 50 C 2118 was purchased by availing a loan of ₹23,78,000/- in the name of CW1. It is alleged that, based on the trust arising out of the partnership, CW1 had handed over possession of the said JCB to the accused, who had promised to use the same and generate profit, which, as agreed, was to be utilised towards repayment of the loan amount. The said arrangement was based on an oral agreement between the parties. According to the prosecution, the JCB remained in the possession of the accused till the year 2015. However, it later came to the knowledge of CW1 that the accused had not made any repayment towards the loan. It is further alleged that, as part of the partnership arrangement, CW1 was entitled to receive an amount of ₹5,69,528/- from the income generated by using the JCB, but the accused failed to pay the said amount. Thus, it is alleged that the accused, with dishonest intention, deceived CW1 and committed the offence as charged.

3. On receipt of First Information Statement from PW1, CW7 registered the First Information Report and after completing investigation, PW2 filed the final report before the court.

4. The accused was released on bail. The accused was represented by a counsel of his choice. Copies of all relevant prosecution records were furnished to the accused under section 207 of Cr.P.C. After hearing both parties and perusing the records, charge was framed for the offences punishable under sections 406 and 420 IPC and was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. In order to prove the prosecution case, the Investigating Officer cited 9 witnesses. From the side of prosecution, PW1 and PW2 were examined and Exts. P1 to P4 were marked. On closure of prosecution evidence, the accused was examined under section 313(1)(b) of Cr.P.C. as to the incriminating evidence brought out against them in prosecution evidence. He denied all that evidence and repeated the plea of innocence.

6. Accused was then called upon to enter upon his defence and produce evidence. From the side of accused, no oral evidence adduced, Ext. D1 was marked.

7. Both sides were heard.

8. Learned APP for the State argued that the prosecution could prove the case beyond reasonable doubt and all the ingredients to satisfy the offence alleged stands proved through the prosecution witnesses.

9. The learned defence counsel filed argument notes and argued that even accepting the entire evidence of PW1 as the gospel truth, the factual foundation for attracting the offences alleged will not be attracted. The documents which prove the ownership of JCB are not produced. Nor are they seized by the police. The learned

defence counsel argued that the evidence of PW1 is filled with material omission making him an untrustworthy witness. According to the learned defence, the Investigating Officer has not seized any documents pertaining to the ownership of the vehicle and also not investigated with regard to the details of alleged financing of the JCB. Hence the investigation is not proper. The learned defence further argued that Sections 406 and 420 of IPC will not lie together since in Section 406, entrustment of any property or dominion over the property must have been handed over with intent to hand over. Section 420 deals with cheating which must disclose the intention of the accused. Mere breach of contract cannot be categorized as "cheating" by repeating the said word. The alleged agreement entered into between PW1 and accused is not even produced. Even assuming that there was such agreement, no penal liability can be imposed on the accused for the mere reason of not honouring the agreement.

10. The following points arose for consideration;

1. *Whether the accused, committed criminal breach of trust to PW1 as alleged by the prosecution as to commit offence punishable under section 406 IPC?*
2. *Whether the accused, cheated PW1 as alleged by the prosecution as to commit offence punishable under section 420 IPC?*
3. *If the accused are found guilty, what should be the proper sentence?*

11. **Point Nos. 1 and 2** :- For the sake of convenience and brevity these points can be considered together. PW1: PW1 is the de facto complainant, who deposed that he resides at Vallapuzha and owns an estate at Attappadi. According to PW1, he had

purchased a JCB by availing a loan from HDFC Bank, Palakkad Branch. He became acquainted with the accused while he was at Attappadi, and the accused had informed him that he had experience in operating JCB and also owned a JCB. Thereafter, they decided to enter into a partnership arrangement to share the profits arising from the use of the JCB. PW1 testified that, towards the purchase of the JCB, the accused contributed only ₹50,000/- and the remaining amount was raised by availing a loan in his name. The JCB so purchased was handed over to the accused, who had promised to repay the loan amount using the income generated from the JCB, and the profits were to be shared proportionately between them. He further deposed that the accused used the JCB for the first three years after entering into the agreement and repaid only a portion of the loan amount, after which PW1 had to repay the entire loan by himself. Due to default in repayment, the bank allegedly harassed him and even visited his residence at Vallapuzha and Attappadi. Consequently, he repaid the entire loan amount. PW1 further stated that when he demanded return of the JCB from the accused, the accused refused. Thereafter, he filed a complaint before the Agali Police Station, and the JCB was eventually handed over to him through the police. He deposed that, during mediation talks, it was agreed that the accused would pay ₹5,70,000/- to him, which was recorded on a white paper. However, the said amount was not paid. Hence, he filed the petition, which was identified and marked as Ext. P1. PW1 further testified that he had given two statements to the police and that the documents pertaining to the JCB were also returned to him through the police. He also deposed that he later sold the JCB for ₹7,00,000/-. During cross-examination,

PW1 admitted that he has no document to show that he purchased the JCB for ₹4,50,000/-, and also no document to prove that the accused had contributed ₹50,000/- towards the transaction. He further stated that, at the time of filing Exhibit P1 before the Pattambi Police Station, the JCB was in his possession. However, he gave inconsistent versions regarding possession, at one point stating that the JCB was with the accused for six years, as against his earlier version of four years and three years. He also stated that he had not signed any document evidencing a settlement between him and the accused before the Agali Police Station. He further deposed that the police had handed over the JCB to him upon verification of the RC particulars. He was confronted with Exhibit P1, wherein the alleged mediation at the Agali Police Station was not mentioned. He further stated that the amount due was calculated by his friend Satish, but this was contradicted by his previous statement, wherein it was stated that the loss was calculated by area committee members, which was marked as Ext. D1.

12. PW2: He is the Investigating Officer who deposed that he took over the investigation of the case from CW8 on 15/12/2015. As he was acquainted with the signature of CW7, with whom he had previously worked, he identified the signature of CW7 in Ext. P1. He also identified the signature of CW7 in the FIR, which was marked as Ext. P2. He further deposed that he had questioned the witnesses and recorded their statements. He stated that the accused had been arrested by CW8, and as he was acquainted with the signature of CW8, he identified the same in the arrest memo, which was marked as Ext. P3. The bail bond prepared by CW8 was marked as

Ext. P4. After completion of the investigation, he submitted the final report before the court. During cross-examination, he admitted that the charge sheet does not mention the date on which the JCB was purchased by PW1. He further stated that there is no statement from PW1 regarding any oral agreement between him and the accused. He also admitted that no documents were produced by PW1, nor was any investigation conducted, to establish that the JCB had been taken back from the possession of the accused. According to him, the available statements indicate that the JCB was in the possession of PW1. He further stated that there is nothing on record regarding the calculation allegedly made by one Satish. He also admitted that there is no material to show that PW1 had spent ₹4,50,000/- for the purchase of the JCB, and there is no clear evidence as to in whose name the ownership of the JCB bearing registration No. KL 50 C 2118 stands.

13. Upon an overall appreciation of the oral and documentary evidence on record, this Court finds that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The gravamen of the prosecution allegation is that the accused, in the guise of a partnership arrangement, dishonestly induced PW1 to part with the JCB and thereafter failed to repay the loan amount and the agreed share of profit, thereby committing the offence of cheating.

14. At the outset, it is to be noted that the entire case of the prosecution rests upon an alleged oral agreement between PW1 and the accused. However, no material is placed on record to substantiate the existence, terms, or conditions of such an agreement. PW1 himself has admitted during cross-examination that there is no

document to show that the accused had contributed ₹50,000/- towards the purchase of the JCB or that there was any agreement, written or otherwise, governing the partnership.

15. Further, the evidence of PW1 suffers from material inconsistencies. He has given contradictory versions regarding the period during which the JCB remained in the possession of the accused, at different points stating it to be three years, four years, and six years. He has also admitted that, at the time of filing the complaint (Ext. P1), the JCB was in his possession, which casts serious doubt on his earlier version that the accused had wrongfully retained the same. The alleged mediation and settlement before the Agali Police Station, under which the accused is said to have agreed to pay ₹5,70,000/-, is not supported by any reliable document, except a reference to a writing on a “white paper,” which has not been produced or proved before this court. Significantly, PW1 has admitted that the alleged loss was calculated not by any objective or documentary method, but by his friend Satish, which stands contradicted by his previous statement wherein it is stated that the amount was assessed by area committee members (Ext. D1). No independent or reliable evidence is adduced to prove the quantum of loss.

16. The evidence of the Investigating Officer further weakens the prosecution case. The Investigating Officer has categorically admitted that the charge sheet does not mention the date of purchase of the JCB and that there is no statement from PW1 regarding the alleged oral agreement. He has also admitted that no documents were produced or verified to establish that the JCB had been in the possession of the

accused or that it was subsequently taken back from him. On the contrary, the available materials indicate that the JCB was in the possession of PW1. There is also no evidence to show the ownership details of the JCB or the financial transactions relating to its purchase. Most importantly, the prosecution has failed to establish the essential ingredients of the offence of cheating i.e. dishonest intention at the inception of the transaction. The materials on record only indicate that there was a business arrangement between PW1 and the accused, and that disputes arose subsequently regarding repayment and sharing of profits. Mere breach of a promise or failure to repay a loan as argued by the learned defence, in the absence of initial fraudulent or dishonest intention, would not constitute the offence of cheating.

17. In the absence of cogent and reliable evidence to establish (i) the existence of a legally enforceable agreement, (ii) entrustment or dishonest inducement, and (iii) fraudulent intention on the part of the accused at the inception, this Court is of the considered view that the prosecution has failed to prove the case beyond reasonable doubt. Accordingly, the accused is entitled to the benefit of doubt. The points are answered against prosecution.

18. **Point No. 3:-** In view of the findings on foregoing points, this point did not require adjudication.

In the result,

1. ***The accused is found not guilty for the offences punishable under section 406 and 420 IPC and is acquitted of these offence under sections 248(1) Cr.P.C.***

2. The bail bond executed by the accused stand cancelled and he is set at liberty forthwith.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, this the 28th day of April, 2026.

Sd/-

Judicial Magistrate of First Class,
Pattambi.

APPENDIX

Witnesses examined for the Prosecution:-

PW1:	Aboobacker, aged 71 years, S/o. Ahammedkutty, Vallapuzha, Pattambi.	First informant CW1
PW2:	SI Basheer C. Chirakkal, aged 50 years, S/o. Ummer, Marancherry, Ponnani.	Police witness CW9

Witnesses examined for the Defence:- NIL

Exhibits marked for Prosecution:-

P1: 18/07/2015 First Information Statement (PW1)
P2: 18/07/2015 First Information Report (PW2)
P3: 24/08/2015 Arrest memo (PW2)
P4: 24/08/2015 Bail Bond (PW2)

Exhibits marked for Defence:-

D1: Relevant portion of 161 statement

Sd/-

Judicial Magistrate of First Class,
Pattambi.

// True Copy//

Judicial Magistrate of First Class,
Pattambi.